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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LUDMILA GULKAROV, JANINE
TORRENCE, KELLY MCKEON, and
JOSH CRAWFORD, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,
v.

PLUM, PBC, and PLUM, INC., Delaware
corporations,

Defendants.

) Case No. 21-cv-00913-YGR

) **PLAINTIFFS' MEMORANDUM IN**
) **OPPOSITION TO MOTION TO**
) **TRANSFER THESE RELATED CASES TO**
) **THE UNITED STATES DISTRICT COURT,**
) **DISTRICT OF NEW JERSEY**

) Date: May 18, 2021

) Time: 3:30 p.m.

) Courtroom: 1

STATEMENT OF ISSUES TO BE DECIDED

1. Is transfer of the related cases proper to the District of New Jersey?
2. Are Plaintiffs entitled to discovery as to the presence and contacts of Plum, PBC to this District?

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Plaintiffs Ludmila Gulkarov, Janine Torrence, Kelly McKeon, Josh Crawford, Vanessa Mathiesen, Jessica David, and Heather Age (collectively, “*Gulkarov* Plaintiffs”) respectfully submit this memorandum of points and authorities in opposition to the motion to transfer venue filed by Defendants Plum, PBC’s and/or Plum, Inc.’s (collectively, “Plum” or “Defendant”) and Campbell Soup Company (“Campbell” or collectively, “Movants”).¹

I. INTRODUCTION

Movants rely upon faulty and contradictory arguments and disputed facts in claiming this Court is not the proper venue. First, Movants seek to transfer all related cases with the exception of the personal injury cases despite the fact that their arguments apply equally to the personal injury cases.² This demonstrates *all* related cases are properly venued here. Second, general jurisdiction may be found here as to Plum because it sells its products in California, engages in business in California as evidenced by its registration with the Secretary of State, and has numerous employees in California. This is sufficient even if Plum is not headquartered here on paper (a disputed representation as discussed below). *Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1077 (9th Cir. 2003), *on reh'g en banc*, 398 F.3d 1125 (9th Cir. 2005) (“Factors to be taken into consideration are whether the defendant makes sales, solicits or engages in business in the state, serves the state’s markets, designates an agent for service of process, holds a license, or is incorporated there.”). Additionally, the first-filed rule properly gives this forum priority. *See Mattero v. Costco Wholesale Corp.*, 336 F. Supp. 3d 1109, 1118 (N.D. Cal. 2018); *Peregrine Semiconductor Corp. v. RF Micro Devices, Inc.*, No. 12CV911-IEG WMC, 2012 WL 2068728, at *9 (S.D. Cal. June 8, 2012). Finally, the convenience of the witnesses and access to evidence

¹ Movant Campbell Soup Company is not named as a defendant in the *Gulkarov* Plaintiffs’ Complaint and is named in only one of the four other actions Plum seeks to transfer.

² In fact, the plaintiffs in the personal injury cases are not residents of California.

1 and the interests of efficiency and justice do not weigh in favor of transferring this action to New
2 Jersey.

3 For these reasons, the Court should not transfer any of the related cases. However, in the
4 event the Court believes any question exists, Plaintiffs request that the Court deny the motion
5 without prejudice and give Plaintiffs the opportunity to take discovery with respect to transfer-
6 related issues such as Plum's factual assertions regarding its presence and contacts in this District
7 and in the State of California.
8

9 **II. SUMMARY OF FACTS AND PROCEDURAL HISTORY**

10 Plaintiff Ludmila Gulkarov filed the first action in this District, indeed in any district,
11 against Plum on February 5, 2021. A week later, *Smid v. Campbell Soup Co.*, No. 1:21cv2417
12 (D.N.J.) was filed in the District of New Jersey. Since the filing of the Gulkarov complaint, this
13 Court has consolidated two consumer class cases, related an additional four consumer class
14 cases, and related two personal injury cases and one RICO case. *See* Dkts. 14, 22, 27, 33, 36, 46.
15 All these cases involve allegations that concern the presence of heavy metals in Plum's baby
16 food products, and all have alleged that Plum was headquartered in this District until the filing of
17 this case. However, Plum has only sought to transfer the consumer class cases.
18

19 This action alleges that Plum engaged in misleading and false advertising by
20 misrepresenting and/or omitting the presence of heavy metals and/or perchlorate in its baby
21 food's packaging and advertising, for products sold throughout the United States, including this
22 District. Consolidated Class Action Complaint ("Complaint"), Dkt. 15, ¶ 1. The *Gulkarov*
23 Plaintiffs allege that Plum has been knowingly, recklessly, and/or negligently selling baby foods
24 that contain arsenic, mercury, cadmium, lead, and/or perchlorate. *Id.*, ¶ 11. Despite this, Plum
25 states that it uses "organic, non-GMO, whole and simple ingredients" and its products are
26
27

1 “always made without genetically modified ingredients.” *Id.*, ¶ 5. Plum’s packaging and labels
 2 further emphasize the quality and safety of its ingredients and claim its products are organic and
 3 made from recipes free of any unnatural ingredients. *Id.*, ¶ 6. Their labeling claims are false,
 4 misleading, and deceptive and violate the common law and consumer protection statutes of a
 5 number of states.

6 The *Gulkarov* Plaintiffs bring these claims against Plum, seek recovery on behalf of a
 7 nationwide class and subclasses of consumers in the states where they reside—California, New
 8 York, Minnesota, Pennsylvania, Kentucky, and Florida. In addition to common law claims,
 9 Plaintiffs bring claims under those states’ consumer protection statutes, including California’s
 10 Consumer Legal Remedies Act (“CLRA”), False Advertising Law (“FAL”), and Unfair
 11 Competition Law (“UCL”). Dkt. 15, ¶¶ 126-29, 164-87. The plaintiffs in the four other matters
 12 Plum seeks to transfer from this District bring similar claims, and, notably for purposes of
 13 Plum’s motion, two of those plaintiffs are from California, and an Oregonian plaintiff brings
 14 CLRA, FLA, and UCL claims.
 15
 16

17 **III. LEGAL STANDARD**

18 “Under section 1404(a), a district court has discretion to transfer an action to another
 19 forum.” *Rui Chen v. Premier Fin. All., Inc.*, No. 18-CV-3771 YGR, 2019 WL 6911263, at *2
 20 (N.D. Cal. Dec. 19, 2019). “The burden of showing that transfer is appropriate is on the moving
 21 party.” *Viera v. Mastercorp, Inc.*, No. C-11-01794 JCS, 2011 WL 2181623, at *2 (N.D. Cal.
 22 June 2, 2011). Movants “must show, among other things, that “transfer will serve the
 23 convenience of the parties and witnesses and will promote the interest of justice.” *Buckman-*
 24 *Falduti v. KinderCare Learning Centers, Inc.*, No. 08-cv-4778, 2009 WL 248247, at *2 (N.D.
 25 Cal. Feb. 2, 2009) (quoting *Costco Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472 F. Supp. 2d
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1 1183, 1189–1190 (S.D. Cal. 2007)). Transfer is not appropriate unless: “(1) that court is one
2 where the action might have been brought; (2) the transfer serves the convenience of the parties;
3 and (3) the transfer will promote the interests of justice.” *Id.* at *1. “Plaintiffs’ choice of forum
4 is generally given great weight.” *Id.*

5 **IV. ARGUMENT**

6 **A. First-Filed Rule Supports a Denial of Transfer**

7
8 There is a strong presumption across federal circuits that favors the forum of the first-
9 filed suit under the first-filed rule. Under the first-filed principle, three factors are considered: the
10 chronology of the two actions, the similarity of the parties, and the similarity of the issues. *Ward*
11 *v. Follett Corp.*, 158 F.R.D. 645, 648 (N.D. Cal. 1994). Here, this case was filed first in this
12 District. Moreover, the parties and issues are largely the same. All of the consumer class actions
13 pending in this District and the District of New Jersey name Plum as a defendant (some also
14 name Plum’s parent company, Campbell), and all revolve around the inclusion (or risk) of heavy
15 metals in Plum’s baby food products and Plum’s related misleading or deceptive
16 misrepresentations and omissions. With substantially the same parties and issues, transfer to the
17 District of New Jersey without the necessary showing of compelling circumstances would
18 contradict the strongly favored first-filed rule.
19

20 Movants maintain there is not general jurisdiction, so the first-filed rule is inapplicable
21 because they are each headquartered in New Jersey. As discussed below, Plum’s own filings,
22 website statements, and employees’ locations at the time of filing contradict Movants’ position
23 that Plum did not do business in California and in fact shows a continuous connection to
24 California through present date. *See* Declaration of Rebecca A. Peterson (“RAP Dec.”), Exs. A-
25
26
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1 C. Moreover, Campbell has two manufacturing plants currently operating in California and it has
2 been reported that:

3 95 percent of all Campbell's ingredients that are subsequently packaged at Campbell's
4 factories throughout North America come from its two California processing plants: The
5 slightly bigger one in Dixon and one to the south in Stockton.

6 *See Id.*, Exs. D-E. This demonstrates systematic and continuous activity in California for both
7 Plum and Campbell.
8

9 **B. Movants Ignore Plum's Significant Contacts with the State of California.**

10 The crux of Movants' arguments purposefully ignores the fact that Plum has always been
11 and continues to be California-based in order to misdirect the Court into focusing on the location
12 of Plum's (current) parent company, Campbell. For several reasons, this position is untenable.
13 As discussed above, Movants' efforts to raise doubt as to general personal jurisdiction in this
14 Court are without merit. Additionally, specific personal jurisdiction exists based on Plum's
15 significant contacts with California. Prior to these lawsuits being filed in California (and
16 Movants deciding they preferred a different forum), one would have had no reason to doubt
17 Plum's connection to California. Earlier this year, on January 27, 2021, Plum filed a
18 "Corporation - Statement of Information" with the California Secretary of State, disclosing its
19 principal office located as 1485 Park Avenue, Emeryville, California 94608. RAP Dec., Ex. A.
20 Movants conveniently now allege that this was an erroneous filing, Defendants Plum, PBC and
21 Campbell Soup Company's Notice of Motion and Motion to Transfer These Related Cases to the
22 United States District Court, District of New Jersey; Memorandum of Points and Authorities in
23 Support ("Defts' Mem.") at 6, yet numerous other records demonstrate Plum's presence in
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1 California. Just last month (March 2021), Plum Organics’ website contained a “Terms of Use”
2 subpage and declared:

3 These Terms shall be governed by and construed in accordance with the laws of
4 the State of California in the United States, without regard to conflicts of law
5 principles, and regardless of your country of origin. You hereby consent and
6 submit to the exclusive jurisdiction and venue of federal and state courts located
7 in Alameda County, California for any legal proceeding directly or indirectly
8 arising out of or relating to this website or these Terms.
9

10 RAP Dec., Ex. B. Plum’s “Terms of Use” subpage also provided that Plum, PBC’s principal
11 office address, for general contact and U.S. Digital Millennium Copyright Act notices, was 1485
12 Park Ave. #200, Emeryville, California 94608. *Id.*

13 Also as of March 2021, RocketReach.co, a web-based tool for finding contact
14 information for professionals using real-time verified data, listed Plum as a company based at
15 1485 Park Ave. #200, Emeryville, California 94608. *See* RAP Dec., Ex. C. RocketReach.co also
16 identified numerous Plum employees based in California, including a Senior Accountant, a
17 Senior Production Specialist, a Senior Manager – Head of Nutrition and Regulatory, Senior
18 Marketing Associate, and the Vice President of Supply Chain. Notably, two of those employees
19 are part of Plum’s management: Marilyn Wong (Senior Accountant) and Agatha Lee (Senior
20 Production Specialist). *Id.* RocketReach.co also identified at least 16 Plum employees as being
21 present in California. *Id.*

22 Linkedin.com, a business and employment-oriented online networking service, also
23 demonstrates Plum’s significant presence in California. The LinkedIn profile of Neil Grimmer,
24 the founder of Plum Organics, declares that he was the “Co Founder & Chairman of Plum, PBC
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1 A Public Benefit Corporation” from January 2016 through March 2019 in Emeryville,
 2 California.³ Erica Robinson, Plum’s Associate Brand Manager and Marketing Manager since
 3 October 2013 and March 2015, resides in Mountain View, California.⁴ Her Plum employment,
 4 which is indicated as current, is based in Emeryville, California. Lynn Ly, Plum’s Category
 5 Manager since August 2015, resides in Oakland, California.⁵ Her current Plum employment is
 6 still listed in the San Francisco Bay Area.⁶ Finally, Campbell has two manufacturing plants in
 7 California, including in Dixon, California, where it manufactures 95% of its ingredients. RAP
 8 Dec., Exs. D-E.
 9

10 Movants’ assertion that they have little to no relevant contacts with this forum is
 11 demonstrably untrue. Plum conducts substantial business in this District, Plum has intentionally
 12 availed itself of the laws and markets of this District, and Plum is subject to specific personal
 13 jurisdiction in this District. Both during the class period and at the time the *Gulkarov* Plaintiffs
 14 purchased the Plum products at issue, Plum was indisputably headquartered in this District.
 15 Thus, Plum has failed to satisfy its burden of establishing that the *Gulkarov* Plaintiffs’ lawsuits
 16 could even have been brought in New Jersey, a threshold requirement under § 1404(a).
 17

18 **C. This District Is the Most Appropriate Forum and Transfer Does Not Serve**
 19 **the Interests of Justice.**

20 The *Gulkarov* Plaintiffs are entitled to choose where to file suit and, absent a strong
 21 showing of inconvenience, their choice of forum should be afforded all deference where, as here,
 22 they filed in the district where Plaintiff Gulkarov resides and the district that has a significant
 23

24 ³ <https://www.linkedin.com/in/neilgrimmer/>

25 ⁴ <https://www.linkedin.com/in/erica-robinson-21a11645/>

26 ⁵ <https://www.linkedin.com/in/lynnmly/>

27 ⁶ *Id.*

1 connection with the subject matter of the case. *Los Angeles Mem'l Coliseum Comm'n v. Nat'l*
2 *Football League*, 89 F.R.D. 497, 499–500 (C.D. Cal. 1981); *Decker Coal Co. v. Commonwealth*
3 *Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986); *see also GTE Wireless, Inc. v. Qualcomm, Inc.*,
4 71 F. Supp. 2d 517, 519 (E.D. Va. 1999) (“[A] plaintiff’s choice of its home forum is given
5 more weight than its choice of a foreign forum.”).

6
7 Currently, there are five class action lawsuits pending in the Northern District of
8 California and four in the District of New Jersey. Three of the five related class action lawsuits
9 pending in the Northern District of California are brought by plaintiffs who are citizens and
10 residents of the State of California. Notably, the first lawsuit filed against Plum was by a citizen
11 of the State of California, Ludmila Gulkarov. Dkt. 15; ¶ 23. It is more convenient for the
12 *Gulkarov* Plaintiffs, and members of the California sub-class they seek to represent, for this
13 matter to be heard in California. Movants argue that Plaintiffs’ choice of forum in this District is
14 “entitled to minimum deference” because Plaintiffs are pursuing claims on behalf of a nationwide
15 class. Defts’ Mem. at 10. But, in addition to glossing over the significant connection of Plum to
16 California, they ignore that Plaintiffs also pursue claims on behalf of a subclass of California
17 citizens.
18

19 When Courts are less deferential to a class action plaintiff’s choice of forum, it is typically
20 to guard against forum shopping or efforts to take advantage of favorable local rules. *Italian*
21 *Colors Rest. v. Am. Express Co.*, No. C 03-3719 SI, 2003 WL 22682482, at *4 (N.D. Cal. Nov.
22 10, 2003)); *Marshall v. Monster Beverage Corp.*, No. 14-CV-02203-JD, 2014 WL 3870290, at *2
23 (N.D. Cal. Aug. 6, 2014)). There is nothing to suggest forum shopping here, nor was this District
24 selected because of its local rules. The *Gulkarov* Plaintiffs selected this district because: (i)
25 Plaintiff Gulkarov resides here; (ii) the Complaint asserts violations of California law; and (iii)
26

1 there is a strong correlation between the wrongful conduct alleged in the Complaint and this
2 forum. Although Movants would have this Court believe otherwise, Plum's contacts with
3 California are many, and its actions in California relate directly to Plaintiffs' claims.

4 While Plum's parent company (Campbell) may be currently headquartered in New Jersey,
5 and Plum alleges that, after 2018, it maintained no operations in California, Defts' Mem. at 5, the
6 numerous public records detailed above demonstrate Plum's continued operations in California
7 as recently as March 2021. Not only that, but on March 31, 2021, Campbell announced that it
8 was selling Plum to Sun-Maid Growers of California ("Sun-Maid"). The transaction is expected
9 to close in early May 2021, and Sun-Maid is headquartered in Fresno, California. After this
10 acquisition, it is unclear whether the District of New Jersey will even arguably be a proper
11 forum, much less a convenient one.
12

13 Based on public records research, there appears to be numerous witnesses in this District
14 that will have information relevant to the claims in these class action lawsuits. Similarly, given the
15 number of Plum witnesses who reside in California, documents are likely to also be housed in
16 California. In addition, the use of electronic discovery means has reduced the burden of the
17 physical location of documents. As technology has "shortened the time it takes to transfer
18 information, reduced the bulk or size of documents or things on which information is recorded ...
19 and have lowered the cost of moving that information from one place to another" alleged
20 convenience issues relating to the location of documentary evidence are given little weight. *Cypress*
21 *Semiconductor Corp., Int'l Microcircuits v. Integrated Cir. Sys., Inc.*, No. 01-199-SLR, 2001 WL
22 1617186, at *3 (D. Del. Nov. 28, 2001) (internal quotation marks and citation omitted); *see also*
23 *Collectis S.A. v. Precision Biosciences, Inc.*, 858 F. Supp. 2d 376, 382 (D. Del. 2012); *United States*
24 *v. H & R Block, Inc.*, 789 F. Supp. 2d 74, 83 (D.D.C. 2011) (citing *Nat'l R.R. Passenger Corp. v. R.*
25
26
27

1 & *R Visual, Inc.*, No. CIV.A.05 822 GK, 2007 WL 2071652, at *6 (D.D.C. July 19, 2007)
 2 (“[T]echnological advances have significantly reduced the weight of the ease-of-access-to-proof
 3 factor.”).

4 Finally, a court should consider “the administrative difficulties flowing from court
 5 congestion.” *Green Aire for Air Conditioning W.L.L. v. Salem*, No. 118CV00873NONESKO,
 6 2020 WL 4734909, at *6 (E.D. Cal. Aug. 14, 2020) (citations omitted). And that should “center[]
 7 on whether a trial may be speedier in another court because of its less crowded docket.” *Id.*
 8 Critical to the Motion here, the District of New Jersey’s courts are “in the throes of a crisis”
 9 because “one-third of its judicial seats are vacant and have been for years, leaving each seated
 10 judge with a pending caseload that is well over three times the national average.”⁷ Based upon
 11 the judicial vacancies in the District of New Jersey, the backlog of pending cases per judgeship
 12 are up 230% since 2016.⁸ This factor shows transfer to the District of New Jersey is improper
 13 and certainly not in the best interest of the Plaintiffs or the putative classes.
 14

15 **D. Transfer Does Not Promote Convenience and Efficiencies**

16 Movants ignore the role that witnesses other than Campbell employees will likely play in
 17 this case.⁹ There is nothing convenient about a California plaintiff being forced to travel to New
 18 Jersey to appear at proceedings in a case about products sold to her in California by a California
 19
 20

21 ⁷ Debra Cassens Weiss, *Short-Handed New Jersey Federal Courts Have 6 Vacancies and a Huge*
 22 *Case Backlog*, ABA Journal (Mar. 18, 2021), [https://www.abajournal.com/news/article/short-](https://www.abajournal.com/news/article/short-handed-new-jersey-federal-courts-have-six-vacancies-and-a-huge-case-backlog)
 23 [handed-new-jersey-federal-courts-have-six-vacancies-and-a-huge-case-backlog](https://www.abajournal.com/news/article/short-handed-new-jersey-federal-courts-have-six-vacancies-and-a-huge-case-backlog)

24 ⁸ See Emily Bader, *Hughes Center Report: N.J. District Court Has Huge Backlog of Cases*, ROI
 25 (May 22, 2020), <https://bit.ly/2P6nLtX>; see also Tracey Tully, *Judges Juggle Over 2,700 Cases*
 26 *Each as Families Wait for Day in Court*, N.Y. Times (Mar. 17, 2021);
 27 <https://www.nytimes.com/2021/03/17/nyregion/federal-court-nj-judges.html>.

28 ⁹ Critically, Movants do not affirmatively claim that Plum or Campbell do not have employees
 located in California.

1 company that employs Californians and maintains manufacturing facilities located in California.
2 And, the inconvenience to Plaintiff Gulkarov and the other California plaintiffs is far greater than
3 any alleged inconvenience to the corporate employees of a company with hundreds of employees
4 located around the country, including in California. The California Plaintiffs are individuals with
5 limited resources and forcing them to take off weeks or months for depositions and trial in New
6 Jersey is far more inequitable than having a few corporate employees travel to California on the
7 few days they will testify—particularly since Plum and Campbell still have continuous and
8 substantial business activity in California. *Cf. Mobilitie Mgmt., LLC v. Harkness*, No.
9 816CV01747JLSKES, 2016 WL 10880151, at *5 (C.D. Cal. Nov. 28, 2016) (the relative financial
10 resources of the parties is an appropriate consideration in resolving a Section 1404(a) motion; an
11 individual defendant who would have to travel to California to defend an action would suffer
12 greater hardship than the employees of a large private company).

14
15 **E. Alternatively, the Court should Permit Limited Discovery Relating to Venue.**

16 If the representations made by Movants as to the location of significant witnesses and
17 documents have created open questions for the Court, the *Gulkarov* Plaintiffs respectfully
18 request that the Court permit them to conduct venue-related discovery prior to the Court ruling
19 on the Motion. *See Myhre v. Seventh-Day Adventist Church Reform Movement Am. Union Int'l*
20 *Missionary Soc.*, 298 F.R.D. 633, 641 (S.D. Cal. 2014) (“Generally, where ‘pertinent facts
21 bearing on the question of jurisdiction are in dispute, discovery should be allowed.’”) (quoting
22 *Am. W. Airlines, Inc. v. GPA Grp., Ltd.*, 877 F.2d 793, 801 (9th Cir.1989)).

24 Significantly, the focus of the lawsuits is the conduct of Plum, which appeared squarely
25 centered in California when the *Gulkarov* Plaintiffs filed their Complaint. Indeed, none of the
26 present class action lawsuits were brought solely against Campbell, the purported connection to
27

1 New Jersey; in fact, Campbell is named as a defendant in only one. Moreover, the upcoming
 2 announced sale of Plum by Campbell to Sun-Maid calls further into question whether transfer will
 3 provide any conveniences to the parties or witnesses, be in the interests of justice, or would be
 4 proper at all. Discovery related to Plum's contacts and connections with this District would provide
 5 further guidance as to these issues. Plaintiffs have served discovery already as to these issues. RAP
 6 Dec., EX. F (Requests for Production 23, 25-27).

7 **V. CONCLUSION**

8 Courts have long recognized that "it is not appropriate to transfer a case on convenience
 9 grounds when the effect would be simply to shift the inconvenience from one party to another."
 10 *Plascencia v. Lending 1st Mortg.*, No. C07-4485CW, 2008 WL 1902698, at *9 (N.D. Cal. Apr.
 11 28, 2008). That is all that a transfer to the District of New Jersey would accomplish here—
 12 moving the litigation from a state with weighty contacts, the home district of three plaintiffs, and
 13 the state where Plum violated California laws, to New Jersey simply because Movants complain
 14 that California is inconvenient to them. For all of the foregoing reasons, the *Gulkarov* Plaintiffs
 15 respectfully request that that the Court deny the motion to transfer this action.

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